Supreme Court, U.S.
FILED
JUL 5 - 2005
OFFICE OF THE CLERK

No. 05-_____ 05-70

In The
Supreme Court of the United States

PEDRO A. ROLDÓS-MATOS,
ARCELIO MALDONADO-ÁVILES,
LILLIANETTE CORTES-SOTO and
EDGARDO LUIS LLORÉNS-VALEDÓN
attorneys for the Legal Aid Society of Puerto Rico,

Petitioners,

v.

SUPREME COURT OF PUERTO RICO,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Puerto Rico

PETITION FOR WRIT OF CERTIORARI

PEDRO J. VARELA-FERNANDEZ
Counsel of Record
Esquire Bldg., Suite 402
San Juan, Puerto Rico 00918
Tel. 787.751.3931, Fax 787.767.8335
Email: mevare@coqui.net

JOSÉ JUAN NAZARIO DE LA ROSA
NAZARIO & SANTIAGO
Abogados Asociados
Alma Mater Bldg.
867 Domingo Cabrera Street
Urb. Santa Rita
San Juan, Puerto Rico 00925-2412
Tel. 787.759.0315, Fax 787.756.0315
Email: nazysant@coqui.net

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

The questions presented in this case are: (1) whether petitioners' constitutional rights of freedom of speech, due process, equal protection of the laws, and the right to organize themselves and to strike under the National Relations Act, were violated by the Puerto Rico Supreme Court for petitioners having been prohibited to engage in concerted activities for the purpose of collective bargaining and sanctioned, out of nearly 100 attorneys, for participating in a legal strike of unionized Legal Aid attorneys and not having appeared to court proceedings while the strike was in effect, although, as in previous occasions, supervisors were available to substitute striking attorneys, and for petitioners having been sanctioned without the benefit of a hearing; (2) whether the application of the Bar Code of Professional Ethics of Puerto Rico to petitioners overrides the National Labor Relations Act in violation of the Supremacy Clause of the Constitution.

PARTIES TO THE PROCEEDINGS

Pedro A. Roldós-Matos, Arcelio Maldonado-Áviles, Lillianette Cortes-Soto and Edgardo Luis Lloréns-Valedón, attorneys for the Legal Aid Society of Puerto Rico, Petitioners

v.

Supreme Court of Puerto Rico, Respondents

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
TABLE OF AUTHORITIES	v
PETITION FOR WRIT OF CERTIORARI	1
OPINION BELOW	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	3
A. Background of the sanctions imposed upon petitioners	3
REASONS FOR GRANTING THE WRIT	6
I. THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH THIS COURT'S PRIOR RULINGS ON THE ESSENTIAL RIGHT OF AN UNION MEMBER TO STRIKE AS CONTEMPLATED BY THE FIRST AMENDMENT, UNDER SECTION SEVEN (7) OF THE NLRA AND PREEMPTION PRINCIPLES	6
A. Petitioners' rights under the National Labor Relations Act were violated by the sanctions imposed by the Supreme Court of Puerto Rico	7
B. Petitioners' First Amendment concerted activities and ethical considerations	10

TABLE OF CONTENTS – Continued

Page

C. Petitioners' right to due process was violated by the Supreme Court of Puerto Rico 17

D. Petitioners' rights to equal protection under the laws were violated by the decision of the Supreme Court of Puerto Rico 19

CONCLUSION 21

TABLE OF AUTHORITIES

Page

CASES:

Bethlehem Steel Co. v. N.Y. State Labor Relations Bd., 330 U.S. 767, 67 S.Ct. 1026, 91 L.Ed. 1234 (1947) 10

Bus Employees v. Missouri, 374 U.S. 74 (1963) 7

Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta, 458 U.S. 141, 102 S.Ct. 3014, 73 L.Ed.2d 664 (1982) 9

Garner v. Teamsters, Chauffeurs & Helpers Local Union, 346 U.S. 485, 74 S.Ct. 161, 98 L.Ed. 228 (1953) 10

Goldberg v. Kelly, 90 S.Ct. 1011 (1970) 18

Hillsborough County v. Automated Medical Laboratories, Inc., 471 U.S. 707, 105 S.Ct. 2371, 85 L.Ed.2d 714 (1985) 9

In re Colón Torres, 129 D.P.R. 490 (1991) 12

In re Franco, ___ F.3d ___ (2005) 18

In re Reglamento . . ., 2001 TSPR 122 (Aug. 31, 2002) 5, 14

Montefiore Hospital and Medical Center v. N.L.R.B., 621 F.2d 510 (2d Cir. 1980) 7, 12

N.Y. Tel. Co. v. N.Y. State Dep't of Labor, 440 U.S. 519, 99 S.Ct. 1328, 59 L.Ed.2d 553 (1979) 10

Neri Tirado v. Tribunal Superior, 104 D.P.R. 429 (1975) 13

Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n, 461 U.S. 190, 103 S.Ct. 1713, 75 L.Ed.2d 752 (1983) 9

TABLE OF AUTHORITIES – Continued

Page

Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters, 436 U.S. 180, 98 S.Ct. 1745, 56 L.Ed.2d 209 (1978) 10

Village of Willowbrook v. Olech, 120 S.Ct. 1073 (2000) 19, 20

STATUTES:

28 U.S.C. 1258 1

29 U.S.C. 157 2

CONSTITUTIONAL PROVISIONS:

First Amendment 1, 5, 6, 10

Fourteenth Amendment 2, 20

Article VI, clause 2 ..... 2, 8

PETITION FOR WRIT OF CERTIORARI

Petitioners, Pedro A. Roldós-Matos, Arcelio Maldonado-Áviles, Lillianette Cortes-Soto and Edgardo Luis Lloréns-Valedón, attorneys for the Legal Aid Society of Puerto Rico, respectfully request that a writ of certiorari be issued to review the judgment of the Supreme Court of Puerto Rico in this case.

OPINION BELOW

The opinion of the Supreme Court of Puerto Rico is reported at Decisions of the Supreme Court of Puerto Rico, 04 TSPR 40, a certified English translation is enclosed in the Appendix to this petition, at pages 1-20.

STATEMENT OF JURISDICTION

The judgment of the Supreme Court of Puerto Rico was entered on March 17, 2004. The Supreme Court of Puerto Rico denied a timely petition for reconsideration on April 8, 2005. App. 23.

The jurisdiction of this Court is invoked under 28 U.S.C. 1258.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The **First Amendment** to the United States Constitution provides in relevant part: Congress shall make no law respecting an establishment of religion, or prohibiting the

free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The **Fourteenth Amendment** to the United States Constitution provides, in its pertinent part, as follows: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The **Supremacy Clause** to the United States Constitution – Article VI, clause 2 – provides: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Section 7 of the National Labor Relations Act, 29 U.S.C. 157, provides in relevant part that employees shall: "have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . ".

STATEMENT OF THE CASE

The fundamental question in this case is whether four unionized Legal Aid attorneys out of nearly 100 that participated in a strike were engaged in protected activity and therefore should not have been sanctioned by the Puerto Rico Supreme Court (PRSC) for an alleged violation of ethical conduct for not having attended court hearings during the strike, especially when the doctrine of preemption under the National Labor Relations Act (NLRA) directly applied and petitioners' supervisors were present at the hearings, who could have substituted herein petitioners, as had occurred in previous occasions. **The crucial issue is whether a PRSC regulation of an ethical conduct may be in conflict with, and may prevail over the right to strike under Section 7 of the NLRA, which recognizes the right of employees to engage in concerted activities for the purpose of collective bargaining.** To fully appreciate the significance of the issues presented in this case, it is essential to consider its procedural background.

A. Background of the sanctions imposed upon petitioners

The Legal Aid Society is a nonprofit organization that has statutory recognition under the laws of Puerto Rico to represent indigent persons charged with criminal offenses. Petitioners Pedro A. Roldós-Matos, Arcelio Maldonado-Áviles, Lillianette Cortes-Soto and Edgardo Luis Lloréns-Valedón were staff attorneys and were members of the Legal Aid Union involved in this case. The union was certified by the National Labor Relations Board (NLRB) in 1983 to represent the staff attorneys of Legal Aid in Puerto Rico. App. 25-26. The Legal Aid Society has around

130 employees, including supervisors, who represent indigent persons in criminal cases within the Island. The attorneys work in the different judicial districts from the offices of the Legal Aid Society located in the cities of San Juan, Bayamón, Carolina, Fajardo, Caguas, Humacao, Ponce, Mayaguez, Aguadilla, Arecibo and Utuado.

On August 16, 2001, the Union called for a strike and its members joined the picket lines. No cases and/or hearings were attended by union members while the strike lasted. Some weeks later, on September 26, 2001, the strike ended when an agreement was reached by the parties.

Petitioners were the only Union members charged before the Supreme Court of Puerto Rico for having violated various sections of the Code of Ethics that apply to attorneys in Puerto Rico. These canons are almost identical to those of the ABA Model Rules of Professional Conduct. The petitioners were charged with violation of Canons 9, 12 and 18 of Professional Ethics, which in the pertinent parts indicate the following:

Canon 9:

> The attorney shall observe a conduct with the court, which may be characterized as one of great respect.

Canon 12:

> It is the duty of the attorney to the Court, colleagues, the parties and witnesses to be punctual in attendance and concise and accurate in the filing and presentation of an action. This implies carrying out all necessary business so as not to cause any undue delays in the steps and solution. The suspension of a hearing should only be requested when powerful reasons exist and

> when it is indispensable for the substantial protection of the rights of the client.
>
> Canon 18:
>
> > It is the duty of the attorney to defend the client's interests diligently, performing in each case with as much knowledge and ability, and acting in the manner that the judicial profession in general deems adequate and responsible.

See 4 PRLA Ap. IX, Canons 9, 12, and 18.

No charges were brought against other members of the Union for not having attended scheduled hearings during the strike. In the past, the PRSC had encountered similar situations and had promulgated various regulations so that attorneys in private practice could be appointed to attend hearings (on a pro bono or a reasonable fee basis) as in the case at bar, in which Legal Aid attorneys were not able to represent clients. See ***In re Reglamento*** . . . , 2001 TSPR 122 (Aug. 31, 2002).

Herein petitioners moved the PRSC to dismiss the charges contending that their conduct was protected by the First Amendment, **that the field was preempted by federal law**, that they had been selectively prosecuted, that since their supervisors were available they could have replaced petitioners at the hearings as it was customarily done and that no damages had been caused to any client during the strike. Petitioners requested for an evidentiary hearing regarding the charges that had been filed against them, but it was not granted.

The PRSC held that the NLRA did not apply to this case and that petitioners had, by not attending the scheduled hearings – despite their respective supervisors having